

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                           |   |                      |
|---------------------------|---|----------------------|
| MICHAEL KONING, M.D., and | ) |                      |
| SUSAN KONING, Husband and | ) |                      |
| Wife,                     | ) |                      |
|                           | ) |                      |
| Plaintiffs,               | ) | 4:08CV3087           |
|                           | ) |                      |
| v.                        | ) |                      |
|                           | ) |                      |
| LOWELL BAISDEN, C.P.A.,   | ) | MEMORANDUM AND ORDER |
|                           | ) |                      |
| Defendant.                | ) |                      |
|                           | ) |                      |

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Plaintiffs' counsel has filed a Report of Parties' Planning Meeting. However, the report states that the defendant has not participated in its preparation. Defendant is proceeding *pro se* in this case, but that does not excuse his failure to participate in the formulation of a discovery plan. [Fed. R. Civ. P. 26\(f\)](#) requires all attorneys "and all unrepresented parties that have appeared in the case" to participate in developing a discovery plan, and further provides, "The court may order the parties or attorneys to attend the conference in person." In addition, [Fed. R. Civ. P. 37\(f\)](#) states:

If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

The court cannot accept an *ex parte* planning report. I shall give the parties one more opportunity to comply with the rules, in the absence of which sanctions will be considered. Because

there is now pending a motion to dismiss, I shall delay the compliance date until after the motion has been resolved.

IT THEREFORE HEREBY IS ORDERED:

1. Filing no. [31](#), Report of Planning Meeting, is stricken.
2. The parties are given until ten days following the court's ruling resolving the pending motion to dismiss (filing no. [30](#)) in which to file their joint Report of Planning Meeting.

DATED this 22<sup>nd</sup> day of October, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge